

RECEIVED
CENTRAL FAX CENTER
AUG 04 2006

II. Claims Summary

Claims 46, 47, 49, 54, and 56 are currently pending in the application, with claims 46 and 54 being independent claims. Claims 1-45, 48, 50-53, and 55 were previously cancelled, and claims 46, 47, and 49 are withdrawn from consideration. Claims 54 and 56 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 4,267,710 to Imamichi.

III. Discussion of Rejection

Independent claim 54 recites a method of manufacturing an article of apparel from a textile. The method includes selecting a first yarn with a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. In addition, a second yarn with a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to the water is selected. The first yarn and the second yarn are then mechanically-manipulated to form a textile with a structure that is modified from a first structure to a second structure upon exposure to the water to change a property of the textile. The second structure has a plurality of nodes in comparison with the first structure, and each of the nodes is at least partially formed from both the first yarn and the second yarn.

The Office Action rejects independent claim 54 as being anticipated by Imamichi. With reference to Imamichi, a double knit fabric is disclosed that has a front surface formed from two synthetic fiber yarns and a rear surface formed from a natural fiber yarn, such as cotton or a blended yarn. According to the Office Action, "When the water is exposed to [the cotton yarn], the hydrophilic yarn (cotton) would absorb water, thus increasing in size.... The increased diameter of the cotton yarn would 'project' nodes onto the surface of the fabric... Both the natural and synthetic fibers contribute into the node formation" (Office Action, pages 3-4).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Although the Office Action asserts that Imamichi discloses nodes at least partially formed from both the first yarn and the second yarn, the Applicants review of Imamichi does not support this assertion. More particularly, the Office Action appears to take Official Notice of the following: "Both the natural and synthetic fibers contribute into the node formation." Although the Examiner does not specifically classify these statements as being Official Notice, this is clearly an improper use

given that the facts asserted are not well-known, and are not common knowledge in the art and not capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record that may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

The Applicants respectfully traverse the Examiner's unsupported assertions that the fabric of Imamichi would have nodes formed by both the natural and synthetic yarns. Accordingly, the Applicants respectfully requests that the Examiner provide documentary evidence in the next Office Action if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

IV. Conclusion

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed by facsimile transmission on August 4, 2006. Should fees be deemed necessary for consideration of this Amendment, such fees are hereby requested and the Commissioner is authorized to charge deposit account number 19-0733 for payment. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at (503) 425-6800.

Respectfully submitted,

By: 
Byron S. Kuzara
Registration Number 51,255

Banner & Witcoff, Ltd.
1001 G Street, N.W.
Washington, D.C. 20001-4597
Telephone: (202) 824-3000

Dated: August 4, 2006